

Remarks

Claims 1-11 are pending.

Claims 1-9 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,681,326.

Claims 1-9 and 11 are rejected under 35 U.S.C. §102(e) as being anticipated by Heer et al. U.S. Patent No. 5,999,629 (Heer).

Claim 10 is rejected under 35 U.S.C. §103(a) as being unpatentable over Heer in view of Garmeau et al. U.S. Patent No. 5,675,647 (Garmeau).

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Entry of this Amendment is proper under 37 CFR §1.116 because the amendment: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issue requiring further search and/or consideration since the amendments amplify issues previously discussed throughout prosecution; (c) satisfies a requirement of form asserted in the previous Office Action; (d) does not present any additional claims without canceling a corresponding number of finally rejected claims; or (e) places the application in better form for appeal, should an appeal be necessary. The amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection. Entry of the amendment is thus respectfully requested.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or simply is clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., simply to avoid the prior art in a way that leaves the claim

novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, because a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting, no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

#### **Double Patenting Rejection**

Claims 1-9 are rejected under the judicially created doctrine of double patenting as being unpatentable over claims 1-9 of Son et al., U.S. Patent No. 6,681,326.

Applicants submit that at this point it is premature for Applicants to file a terminal disclaimer to overcome the non-statutory double patenting rejection because the allowable subject matter has not been determined yet. Applicants may have to amend the claims of the present application during its prosecution. Accordingly, such possible amendments may remove the basis for this rejection. Applicants respectfully request to hold the rejection in abeyance until the allowable subject matter is determined.

#### **Rejection Under 35 U.S.C. §102**

Claims 1-9 and 11 are rejected under 35 U.S.C. §102(e) as being anticipated by Heer. The rejection is traversed.

Anticipation requires the presence in a single prior art reference of each and every element of the claimed invention arranged as in the claim. Heer fails to teach or suggest

each and every element of the claimed invention arranged as in Applicants' claim 1.

Specifically, Heer fails to teach or suggest at least:

"a distribution center comprising a remote server, said remote server storing said at least one partially encrypted video program received from said at least one programming source, and said remote server processing said partially encrypted video program corresponding to a subscriber requested video program to produce a fully encrypted video program,"

as recited in independent claim 1 (emphasis added).

Generally, Heer discloses an encryption module which may generate and manage encryption keys to prevent misappropriation of the keys (see col. 1, lines 5-8; and lines 48 – 59). Heer focuses primarily on secure exchanging of the encryption keys and encrypting and decrypting the encryption keys to facilitate the secure exchanges. Heer also discloses encrypting video programs. However, Heer discloses only a conventional way of encrypting the video programs (see col. 4, line 10-15).

According to Heer, a video program goes through the following steps: it is generated by a Video Program Generator 10, compressed by Program Encoder 15, encrypted by Security Module 30, and then stored at Video Server 60 for later access and decryption by subscribers. (See col. 2, lines 39-65; col. 6, lines 41-43). Specifically, when a certain program needs to be encrypted, the security module 30 of the IPS 20 decrypts the encrypted program encryption key and using the decrypted key encrypts the received video stream in a "conventional manner" (see col. 3, line 45 – col. 4, line 15). However, Heer fails to disclose encrypting a video program in two steps: first partially, and then, fully. Further, because Heer discloses encrypting a video program in a conventional manner, arrangement involving partial encryption by one device/element and full encryption by another device/element is not inherent from Heer.

In contrast, as claimed by Applicants in independent claim 1, a video program is first stored in a partially encrypted form at a video source, and then, transmitted to a remote server, where the partially encrypted video program is subsequently processed to produce a fully encrypted video program. For example, as described in Applicants' specification, the video source may encrypt a video program using a single Data Encryption Standard (DES) encryption. The resulting partially encrypted program is further encrypted using a double DES encryption at the remote server. Accordingly,

three different encryption keys are used to encrypt one video program (see Applicants' published application, paragraphs [0041]-[0042]).

The Examiner states that Heer discloses both the partially encrypted video program and the fully encrypted video program. Specifically, the Examiner states that the partial encryption is done by an information protection system (IPS), element 20 Fig. 1, while the full encryption is completed by an access control system (ACS), element 40 of Heer (see Final Office Action, page 2). Applicants respectfully disagree with such an interpretation of Heer.

First, Heer does not disclose that the ACS 40 encrypts, whether partially or fully, a video program. Rather, the ACS 40 sends instruction to IPS 20 to encrypt the video program (col. 3, lines 45-47). Issuing an instruction to decrypt a video program and encrypting the video program are entirely different actions and one cannot anticipate the other.

Second, as discussed above, Heer discloses a conventional manner of encrypting a video program. Thus, even assuming that the ACS 40 encrypts video programs, at most the ACS 40 does it in a conventional manner, i.e., encrypting an unencrypted video program using one encryption key, and therefore, does not encrypt video programs that have been already partially encrypted.

Accordingly, Heer does not teach or suggests, a remote server storing at least one partially encrypted video program received from at least one programming source and the remote server processing the partially encrypted video program to produce a fully encrypted video program. Therefore, Heer does not teach or suggest each and every one of the elements of the Applicants' invention as arranged in independent claim 1.

Accordingly, Applicants submit that independent claim 1 is not anticipated by Heer and is allowable under 35 U.S.C. §102.

Furthermore, claims 2-9 and 11 depend directly or indirectly from independent claim 1, while adding additional elements. Therefore, these dependent claims also are not anticipated by Heer and are allowable under 35 U.S.C. §102 for at least the same reasons as discussed above in regards to independent claim 1.

Accordingly, the rejection should be withdrawn.

**Rejection Under 35 U.S.C. §103**

Claim 10 is rejected under 35 U.S.C. §103(a) as being unpatentable over Heer in view of Garmeau. The rejection is traversed.

Claim 10 depends from independent claim 1 and recites additional limitations thereof. For at least the reasons discussed above, Heer fails to teach or suggest Applicants' invention as recited in claim 1 as a whole. Garmeau does not teach or suggest the missing elements. Accordingly, the combination of Heer and Garmeau, in a rejection of dependent claims, would still result in a gap in the combined teachings in regards to the independent claim. As such, Applicants submit that dependent claim 10 is allowable under 35 U.S.C. §103 over Heer in view of Garmeau.

Accordingly, the rejection should be withdrawn.

**Conclusion**

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 530-9404 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

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